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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/101,236 07/06/98 MATOBA

Y PM255089/SCC

EXAMINER

HM12/0831

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MARSCHEI, A

ART UNIT

PAPER NUMBER

1631

DATE MAILED:

08/31/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/101,236**

Applicant(s)  
**Matoba et al.**

Examiner  
**Ardin Marschel**

Art Unit  
**1631**



**- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -**

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☐ Responsive to communication(s) filed on \_\_\_\_\_

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-36 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☒ Claims 1-36 are subject to restriction and/or election requirements.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☒ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other:

Attached is a copy of an Examiner Interview Summary form for a telephone interview on 7/13/01. Kendrew Colton informed the PTO that a preliminary amendment which replaced the original 24 claims in the PCT application with 36 claims had not been considered. These replacement claims have now been found in the instant file and have been entered. This office action is a new Lack of Unity office action to replace and supercede the one mailed on 6/14/01. The response time is hereby restarted as of the mailing date of this office action.

This application has been filed under 35 U.S.C. § 371 and has been determined to have Lack of Unity of invention under PCT Rule 13.1 and under 37 CFR § 1.499 regarding the U.S. National Stage application as summarized below:

SPECIE ELECTION REQUIREMENT:

This application contains claims directed to the following patentably distinct species of the claimed invention:

SPECIE A: Method species requiring the evaluation of human safety as specifically required, for example, for the practice of instant claim 2

- claims 1, 2, 19, and 20

SPECIE B: Methods species requiring the spraying of a pesticidal compound as specifically required, for example, for the practice of instant claim 3

- claims 1, 3-6, 9-14, 17-19, 21-24, 27-32, 35,  
and 36

\*\* IF THIS SPECIE B IS ELECTED THEN THE BELOW FURTHER SPECIES ELECTION IS ALSO REQUIRED:

SPECIE B-1: Methods requiring spraying but without requiring degradation of the sprayed compound

- claims 1, 3, 5, 9, 11, 13, 17, 19, 21, 23, 27, 29, 31, and 35

SPECIE B-2: Methods requiring the evaluation of degradation of the sprayed compound as specifically required, for example, for the practice of instant claim 4

- claims 1, 3, 4-6, 9, 10, 12-14, 17-19, 21-24, 27-32, 35, and 36

SPECIE C: Methods requiring the heated vaporization of a pesticidal compound as specifically required, for example, for the practice of instant claim 7

- claims 1, 7, 8, 15, 16, 19, 25, 26, 33, and 34

\*\* IF THIS SPECIE C IS ELECTED THEN THE BELOW FURTHER SPECIES ELECTION IS ALSO REQUIRED:

SPECIE C-1: Methods requiring heated vaporization but without requiring degradation of the vaporized compound

- claims 1, 7, 15, 19, 25, and 33

SPECIE C-2: Methods requiring the evaluation of degradation of the vaporized compound as specifically required, for example, for the practice of instant claim 8

- claims 1, 7, 8, 15, 16, 19, 25, 26, 33, and 34

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 19 are generic to all the above species.

Each of the above species and sub-species are directed to distinct Special Technical Features in that different considerations are required for each as listed with each of the above species or sub-species. For example, evaluation of human safety concerns is clearly different from the physical delivery limitations such as the spraying versus vaporization considerations which is a consideration as to how a pesticide compound might be dispersed.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or

admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, a Lack of Unity restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR § 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703)308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703)308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

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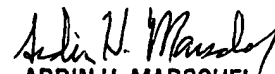
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703)308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Patent Analyst, Tina Plunkett, whose telephone number is (703)305-3524 or to the Technical Center receptionist whose telephone number is (703)308-0196.

August 29, 2001

  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER